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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of)	FCC 94-145
)	
Equal Access and Interconnection)	
Obligations Pertaining to)	
Commercial Mobile Radio Services)	CC Docket No. 94-54
)	

To: The Commission

REPLY COMMENTS OF THE RURAL CELLULAR ASSOCIATION

The Rural Cellular Association ("RCA"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, submits the following reply comments to the comments submitted by various parties in response to the Notice of Proposed Rule Making and Notice of Inquiry ("NPRM") in the above-captioned proceeding.

Over seventy-five parties, including RCA, filed comments in response to the NPRM on September 12, 1994. RCA responds to those comments with respect to two issues. First, RCA supports those commenters who believe that equal access obligations should not be mandatorily imposed on Commercial Mobile Radio Service ("CMRS") providers. Second, RCA vehemently opposes the suggestion made by the National Cellular Resellers Association ("NCRA") that cellular and other CMRS licensees should be required to let resellers connect their own switches to the cellular licensee's system. In support whereof, the following is respectfully shown:

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I. MANDATORY EQUAL ACCESS RULES ARE NOT SUPPORTED BY THE RECORD AND ARE NOT IN THE PUBLIC INTEREST.

The majority of commenters oppose the adoption of rules that would impose mandatory equal access on cellular and other CMRS providers.¹ Those commenters favoring the imposition of equal

¹ See Comments of Cellular Telecommunications Industry Association ("CTIA") pp. 3-14; Comments of National Telephone Cooperative Association ("NTCA") pp. 2-6; Comments of Small Market Cellular Operators ("SMCO") pp. 3-6; Comments of American Mobile Telecommunications Association, Inc. ("AMTA") p. 5; Comments of Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO") p. 3; Comments of Personal Communications Industry Association ("PCIA") pp. 7-8; Comments of National Association of Business and Educational Radio, Inc. ("NABER") pp. 3-5; Comments of Airtouch Communications pp. 3-11; Comments of Palmer Communications, Inc. ("Palmer") p. 1; Comments of GTE Service Corporation ("GTE") pp. 2-27; Comments of Highland Cellular, Inc. ("HCI") pp. 2-3; Comments of Point Communications ("Point") pp. 2-4; Comments of Horizon Cellular Telephone Company ("Horizon") pp. 2-4; Comments of Triad Cellular, Inc. ("Triad") pp. 2-8; Comments of Florida Cellular RSA Limited Partnership ("FCRLP") pp. 2-3; Comments of Sagir, Inc. ("Sagir") pp. 2-4; Comments of Lake Huron Cellular Corporation ("Lake Huron") pp. 2-4; Comments of Dakota Cellular, Inc. ("Dakota") pp. 2-4; Comments of Americell PA-3 Limited Partnership ("Americell") pp. 2-4; Comments of First Cellular of Maryland ("First Cellular") pp. 2-4; Comments of Pacific Telecom Cellular, Inc. ("PTCI") pp. 3-4; Comments of Century Cellunet ("Century") p. 2; Comments of Michael B. Azeez ("Azeez") pp. 2-6; Comments of Vanguard Cellular Systems, Inc. ("Vanguard") pp. 4-5; Comments of ALLTEL Mobile Systems, Inc. ("ALLTEL") p. 2; Comments of Saco River Cellular Telephone Company ("Saco") pp. 2-3; Comments of Union Telephone Company, Inc. ("Union") p. 2; Comments of Comcast Corporation ("Comcast") pp. 19-21; Comments of SNET Mobility, Inc. ("SNET") p. 2; Comments of Western Wireless Corporation ("WWC") p. 2; Comments of Dial Page, Inc. ("Dial Page") p. 2; Comments of OneComm Corporation ("OneComm") pp. 5, 9; Comments of RAM Mobile Data USA Limited Partnership ("RAM") p. 3; Comments of E.F. Johnson Company ("Johnson") pp. 3-4; Comments of Nextel Communications, Inc. ("Nextel") pp. 5-7; Comments of Geotek Communications, Inc. ("Geotek") pp. 2, 4; Comments of Columbia PCS, Inc. ("Columbia") p. 3; Comments of American Personal Communications ("APC") pp. 2-3; Comments of Cox Enterprises, Inc. ("Cox") p. 16; Comments of Claircom Communications Group, Inc. ("Claircom") pp. 1-2; Comments of AMSC Subsidiary Corporation ("AMSC") pp. 7-8; Comments of Maritel ("Maritel") pp. 3-4; Comments of Paging Network, Inc. ("PNI") p. 3; Comments of Waterway Communications, Inc.

access on cellular service providers include five large interexchange carriers, MCI, AT&T, WilTel, Allnet and LDDS, several of the RBOCs who are already subject to equal access pursuant to the terms of the Modified Final Judgement in United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983) ("MFJ"), McCaw Cellular Communications who recently became subject to the similar MFJ restrictions as a result of its merger with AT&T,² and a few other commenters that believe that equal access may potentially be beneficial if properly implemented.³

RCA supports those commenters who oppose the imposition of mandatory equal access on CMRS providers. RCA finds the comments filed by Airtouch particularly revealing and urges the Commission to give them a great deal of weight when making its final decision concerning the imposition of equal access obligations on cellular carriers. Airtouch, who had previously been subjected to equal access requirements under the MFJ because of its affiliation with

("Waterway") p. 8; Comments of Miscellco Communications, Inc. ("Miscellco") p. 2; and Comments of Telephone and Data Systems, Inc. and United States Cellular Corporation ("TDS") pp. 1-3.

² Stipulation, United States v. AT&T, (D.D.C.) (No. 94-1555) (filed July 15, 1994).

³ See Comments of TRW, Inc. ("TRW") pp. 2, 4-6 (equal access is appropriate for cellular providers and should be extended to all terrestrial CMRS providers, but not to CMRS providers, like TRW, that utilize MSS space segment); Comments of DCR Communications, Inc. ("DCR") pp. 3-6; Comments of National Association of Regulatory Utility Commissioners ("NARUC") p. 2; and Comments of Southern Company ("Southern") p. 3 (Southern is an SMR licensee intends to provide equal access to its customers at some point in the future).

PacTel, conducted extensive market studies which demonstrated that cellular customers primarily seek wide coverage areas, low overall monthly bills, high quality signal, cellular service features and the ability to roam on other systems.⁴ The ability to select any IXC has little value to most customers.⁵ A decrease in the scope of the toll free calling area is of paramount concern to most consumers.⁶ RCA, therefore, submits that the public interest is better served by not forcing equal access on cellular carriers. Letting marketplace demands govern whether a CMRS provider offers a choice of IXCs best serves the public interest.

A review of the comments submitted by the RBOCs and McCaw in this proceeding makes it clear that these entities are using this proceeding in their attempt to get out from under the restraints of the MFJ.⁷ This proceeding is not the forum for that debate. It is up to the Congress and the MFJ Court to remedy the RBOC's situation. Just because the RBOCs are subjected to these

⁴ The Airtouch study supports the findings which RCA member companies have previously reported to the Commission. See NPRM at para. 25 citing to Comments filed by Opposing Group. Members of the Opposing Group formed the Rural Cellular Telephone Coalition, RCA's predecessor.

⁵ See Comments of Airtouch at pp. 4-5; Comments of Southwestern Bell Corporation ("SBC") pp. 31-35; Comments of OPASTCO p. 4; Comments of FCRLP p. 2; Comments of HCI p. 2; Comments of Century pp. 10-11; and Comments of ALLTEL p. 6.

⁶ See Comments of Airtouch pp. 4-5; Comments of SBC p. 35; Comments of GTE p. 12; and Comments of Palmer pp. 7-8.

⁷ See Comments of BellSouth pp. 27-35; Comments of Bell Atlantic pp. 4-5; Comments of Ameritech pp. 1-2; Comments of NYNEX pp. 3-6; Comments of SBC pp. 16-45; Comments of Pacific Bell pp. 2-3; Comments of AT&T pp. 3-5; and Comments of McCaw p. 30.

requirements does not mean that other cellular carriers should be subjected to them.

The comments filed by the IXC's show that the larger IXC's are attempting to use government regulation to obtain a larger market share in the CMRS long distance marketplace rather than trying to compete effectively with smaller IXC's and long distance resellers. There are numerous smaller IXC's who have priced their services competitively and have had no trouble becoming the IXC of choice for cellular carriers. Accordingly, RCA submits that marketplace forces should govern the CMRS long distance marketplace not forced government regulation.

Other commenters have suggested that equal access may be beneficial.⁸ However, these commenters have no practical experience with equal access in a cellular context and have provided no support for their broad statements. As evidenced by the record in this proceeding, RCA respectfully submits that the Commission's tentative conclusion that equal access obligations should be imposed on cellular carriers is simply not supported. Accordingly, in light of the record, it would be imprudent on the part of the Commission to impose equal access on cellular carriers.

⁸ See e.g., Comments of General Services Administration ("GSA"); Comments of the People of the State of California and the California Public Utility Commission of the State of California ("CAPUC"), Comments of DCR Communications, Inc. ("DCR") Puerto Rico Telephone Company (PRTC); and Comments of State of New York Department of Public Service ("NYDPS").

II. RCA OPPOSES THE ADOPTION OF ANY RULE THAT WOULD MANDATE THE PROVISION OF INTERCONNECTION BY CELLULAR CARRIERS TO CELLULAR RESELLERS.

The Commission invited comment on whether any interconnection obligations it adopts for CMRS providers should apply to CMRS resellers that use their own switches.⁹ In its comments, NCRA asked the Commission to not only impose interconnection obligations on switch based resellers, but to also require CMRS providers to interconnect with such resellers.¹⁰ NCRA's proposed interconnection obligation is unnecessary and contrary to the public interest.

Before examining whether CMRS providers should be required to interconnect with switch based resellers, the Commission must first determine whether switch based cellular resale is necessary or desirable. At present, there is little if any switch based resale of cellular radio service. Indeed, RCA is not aware of any instances where a cellular reseller has actually connected its own switch to a cellular MTSO in order to provide switch-based resale services. RCA questions whether switch-based resale is technically and financially viable. BellSouth has raised the same concerns in its comments. (BellSouth Comments pp. 18-19). Several other commenters have expressed opposition to switch-based resellers on the grounds that cellular carriers do not control bottleneck

⁹ NPRM at para. 128.

¹⁰ Cellular Service, Inc./ComTech, Inc. and the CAPUC have made similar suggestions in their respective comments. See Comments of Cellular Service, Inc. and ComTech, Inc. ("ComTech") pp. 4-10; and CAPUC pp. 4-5.

facilities and because the costs associated with disaggregating cellular switching and transport functions are not economically or technically feasible.¹¹ Accordingly, any decision to impose interconnection obligations on CMRS providers with respect to cellular resellers will create a new industry, the impact of which must be considered.

RCA is not opposed to individually negotiated arrangements whereby cellular resellers and cellular licensees agree to interconnect their facilities. However, regulations that force cellular licensees to enter into such arrangements would result in an uneven playing field. Mandating reseller interconnection for mobile services would allow a cellular reseller to provide full service to their customers, but without the regulatory constraints imposed on the licensee. Not only would such a regulation afford resellers with an unfair competitive advantage, but it would also not subject resellers to any of the regulatory obligations the Commission imposes on cellular licensees. For example, would switch-based cellular resellers be subject to spectrum caps? broadband PCS cross-ownership restrictions? reporting requirements? annual user fees? Clearly, allowing unlicensed cellular resellers to provide service functionally equivalent to licensed cellular service without any public interest obligations would run contrary to the spirit of regulatory parity at the heart of commercial mobile service regulation. Accordingly, RCA believes that

¹¹ See Comments of Comcast pp. 17-19; Comments of McCaw pp. 14-17; Comments of AT&T p. 14; and Comments of GTE p. 46.

mandatory interconnection among cellular resellers and CMRS providers should not be imposed.


III. CONCLUSION

As discussed above, RCA does not believe that equal access and interconnection obligations should be adopted for CMRS providers, including cellular carriers, at this time. If such obligations are adopted, RCA respectfully submits that recognition of the unique circumstances surrounding the provision of radio-based services to rural America by rural cellular carriers should guide the Commission to a finding that equal access and interconnection obligations should not be applied to rural cellular carriers.¹² Such a finding is consistent with the public interest, convenience and necessity.

Respectfully submitted,

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October 13, 1994

¹² The unique circumstances surrounding the provision of radio-based services to rural America by rural cellular carriers are discussed at length in RCA's Comments. Several other commenters have supported an exemption from the application of equal access requirements for rural cellular carriers. See Comments of OPASTCO p. 4; Comments of the National Telephone Cooperative Association ("NTCA") pp. 6-7; Comments of Triad Cellular pp. 8-9; and Comments of Century pp. 17-18.

Certificate Of Service

I, Caressa D. Bennet, Regulatory Counsel for the Rural Cellular Association, do hereby certify that a copy of the foregoing "Reply Comments of the Rural Cellular Association" was mailed by First Class U.S. Mail, postage prepaid, this 13th day of October 1994 to the following:

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